

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
July 1, 2017)	WC Docket No. 17-65
Annual Access Charge Tariff Filings)	
)	
Ameritech Operating Companies)	
Tariff F.C.C. No. 2)	Transmittal No. 1860
)	
BellSouth Telephone Company)	
Tariff F.C.C. No. 1)	Transmittal No. 130
)	
Nevada Bell Telephone Company)	
Tariff F.C.C. No. 1)	Transmittal No. 301
)	
Pacific Bell Telephone Company)	
Tariff F.C.C. No. 1)	Transmittal No. 553
)	
Southwestern Bell Telephone Company)	
Tariff F.C.C. No. 73)	Transmittal No. 3444
)	

PETITION OF LEVEL 3 TO REJECT OR SUSPEND AND INVESTIGATE

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PETITION OF LEVEL 3 TO REJECT OR SUSPEND AND INVESTIGATE

Pursuant to Section 1.773(a) of the Commission’s rules and the *July 1, 2017 Tariff Filing Order*,¹ Level 3 Communications, LLC (“Level 3”) hereby petitions the Wireline Competition Bureau (“Bureau”) to reject, or, in the alternative, suspend and investigate the above-referenced transmittals filed by AT&T, Inc. (“AT&T”) on June 16, 2017 as they apply to AT&T’s

¹ 47 C.F.R. § 1.773(a); *July 1, 2017 Annual Access Charge Tariff Filings*, Order, 32 FCC Rcd. 1918 (WCB 2017) (“*July 1, 2017 Tariff Filing Order*”).

implementation of revisions to Tandem Switched Transport Access Service rates required by Section 51.907(g)(2) of the Commission's rules.²

I. INTRODUCTION

The tariff changes proposed by AT&T are inconsistent with the Commission's access charge transition rules, the Commission's order adopting those rules, Section 3(2) of the Communications Act of 1934, as amended, the dictionary definition of "affiliate," and sound public policy.³ The Bureau should therefore reject the transmittals or, at the very least, suspend them and initiate a thorough investigation of their lawfulness.

The Bureau should reject the proposed transmittals because they are patently unlawful. Section 51.907(g)(2) of the Commission's rules states that, beginning July 1, 2017, each price cap carrier must "establish, for interstate and intrastate terminating traffic traversing a tandem switch that the terminating carrier *or its affiliates* owns, Tandem-Switched Transport Access Service rates no greater than \$0.0007 per minute."⁴ The definition of "affiliate" in Section 3(2)

² 47 C.F.R. § 51.907(g)(2). The AT&T June 16, 2017 tariff filings at issue include the following: Ameritech Operating Companies, Transmittal No. 1860, Tariff F.C.C. No. 2 § 6.9.1(A), 13th Revised Page 207.1.1.1 (June 16, 2017); BellSouth Telecommunications, Transmittal No. 130, Tariff F.C.C. No. 1 § 6.8.1(C), 4th Revised Page 6-273 (June 16, 2017); Nevada Bell Telephone Company, Transmittal No. 301, Tariff F.C.C. No. 1 § 6.8.1(C), 11th Revised Page 6-146 (June 16, 2017); Pacific Bell Telephone Company, Transmittal No. 553, Tariff F.C.C. No. 1 § 6.8.2(C), 15th Revised Page 6-214 (June 16, 2017); Southwestern Bell Telephone Company, Transmittal No. 3444, Tariff F.C.C. No. 73 § 6.9.2(C), 29th Revised Page 6-179.11 (June 16, 2017).

³ 47 U.S.C. § 153.

⁴ 47 C.F.R. § 51.907(g)(2) (emphasis added); *see also Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663, 18173 (2011) ("*USF/ICC Transformation Order* or *USF/ICC Transformation FNPRM*"), *aff'd sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) (emphasis added).

of the Communications Act encompasses *all* entities owned or under common ownership, regardless of the services provide by such entities. This definition makes sense here because it promotes the Commission’s policy objective of transitioning the industry to bill and keep. Neither the rule nor the *USF/ICC Transformation Order* limits the term “affiliates” in any way. Yet AT&T’s tariff transmittals limit the term “affiliates” to mean only AT&T ILECs. AT&T therefore excludes other affiliates from the definition, including affiliates that provide CLEC service, VoIP service, or wireless service. Since this interpretation of “affiliates” has no basis in law or policy, it should be rejected.

Even if the Bureau does not reject the transmittals, it should suspend and investigate them because there are significant questions as to whether AT&T has sought to unlawfully evade application of the Tandem-Switched Transport Access Service rate reduction to its affiliates that are not ILECs. If the Bureau does not suspend the instant tariffs, interconnecting carriers will be forced to pay rates that exceed the maximum rates permitted under Section 51.907(g)(2) and the transition to bill and keep will be needlessly undermined.

II. ARGUMENT

As explained below, the Bureau should reject AT&T’s proposed tariff revisions, or, in the alternative, suspend and investigate the proposed tariff revisions.

A. The Extent to Which AT&T Has Complied with Section 51.907(g)(2) Can Only Be Determined By Reviewing AT&T’s June 16 Tariff Transmittals.

In its June 7, 2017 tariff transmittals, AT&T purported to restructure its tandem transport and host remote rate elements by splitting tandem rate elements for terminating tandem traffic into two categories.⁵ For example, the June 7 BellSouth transmittal explains that:

⁵ See Ameritech Operating Companies, Transmittal No. 1859, Tariff F.C.C. No. 2 § 6.8.2(D)(4), 9th Revised Page 180 (June 7, 2017); BellSouth Telecommunications, Transmittal No. 129,

Access Tandem Switching provides for the function of switching traffic through the Access Tandem from or to the end office switch(es). The Access Tandem Switching charge is assessed on all originating and terminating minutes of use switched at the Access Tandem. Access Tandem Switching charges are billed as Originating, Terminating to Telephone Company's own end office and Terminating to non-Telephone Company 3rd party locations based on call recordings. Non-Telephone Company 3rd party locations are all offices or other locations not owned by the Telephone Company. *Examples of 3rd party locations include terminations to other local exchange and wireless carriers.*⁶

The Description and Justification narratives accompanying both the June 7 transmittals and the instant transmittals explain further that AT&T considers "3rd party locations" to "include[]" traffic that terminates from a Price Cap ILEC-owned tandem to an affiliated CLEC or wireless end office," while "Traffic Terminating from a Price Cap ILEC-owned Tandem to its own or any other Price Cap ILEC End Office owned by the same Holding Company, will be considered 'Tandem-to-End Office' that will transition to \$0.0007."⁷ The June 7 transmittals did not,

Tariff F.C.C. No. 1 § 6.1.3(A)(2)(b)(3), 1st Revised Page 6-17 (June 7, 2017); Nevada Bell Telephone Company, Transmittal No. 300, Tariff F.C.C. No. 1 § 6.7.1(D)(3), 1st Revised Page 6-112, 2nd Revised Page 6-113 (June 7, 2017); Pacific Bell Telephone Company, Transmittal No. 552, Tariff F.C.C. No. 1 § 6.7.1(D)(3), 2nd Revised Page 6-167 (June 7, 2017); Southwestern Bell Telephone Company, Transmittal No. 3443, Tariff F.C.C. No. 73 § 6.8.3(E)(3), 5th Revised Page 6-149.4, 6th Revised Page 6-149.5 (June 7, 2017).

⁶ BellSouth Telecommunications, Transmittal No. 129, Tariff F.C.C. No. 1 § 6.1.3(A)(2)(b)(3), 1st Revised Page 6-17 (June 7, 2017); (emphasis added). The other AT&T June 7 transmittals, *supra* note 5, include substantially similar provisions.

⁷ Ameritech Operating Companies, Transmittal No. 1859, Description and Justification, 1 (June 7, 2017); BellSouth Telecommunications, Transmittal No. 129, Description and Justification, 1 (June 7, 2017); Nevada Bell Telephone Company, Transmittal No. 300, Description and Justification, 1 (June 7, 2017); Pacific Bell Telephone Company, Transmittal No. 552, Description and Justification, 1 (June 7, 2017); Southwestern Bell Telephone Company, Transmittal No. 3443, Description and Justification, 1 (June 7, 2017); Ameritech Operating Companies, Transmittal No. 1860, Description and Justification, 34 (June 16, 2017); BellSouth Telecommunications, Transmittal No. 130, Description and Justification, 32 (June 16, 2017); Nevada Bell Telephone Company, Transmittal No. 301, Description and Justification, 31 (June 16, 2017); Pacific Bell Telephone Company, Transmittal No. 553, Description and Justification, 31 (June 16, 2017); Southwestern Bell Telephone Company, Transmittal No. 3444, Description and Justification, 32 (June 16, 2017).

however, establish specific rates for the classes of traffic described in those transmittals. The June 16 transmittals did that.

As a result, it is only possible to determine whether AT&T's rate restructuring complies with Section 51.907(g)(2) by reviewing the June 16 transmittals. AT&T could have set all of the rates proposed in the June 16 transmittals at or below the level required by Section 51.907(g)(2), in which case bifurcation would not have resulted in a violation of the rule. It was not until the June 16 transmittals that AT&T actually set forth the rates for traffic to be terminated by non-ILEC affiliates that exceed the level permitted under Section 51.907(g)(2). This petition therefore is timely pursuant to the deadlines set forth in the *July 1, 2017 Tariff Filing Order*.⁸

B. The Transmittals Are Unlawful and Should Be Rejected.

The Bureau should reject the instant tariff transmittals. The transmittals propose rates for calls "Terminating to non-Telephone Company 3rd party locations" that exceed the \$0.0007 cap established in Section 51.907(g)(2) of the Commission's rules. Exempting this traffic from the transition to bill and keep is flatly inconsistent with the terms of Section 51.907(g)(2), the *ICC/USF Transformation Order*, the definition of "affiliate" in Section 3(2) of the Communications Act, the dictionary definition of "affiliate," and the Commission's policy objectives.

The terms of Section 51.907(g)(2) do not explicitly or implicitly limit the scope of the word "affiliates." The only permissible inference is that "affiliates" as used in Section 51.907(g)(2) means *all* affiliates of the terminating tandem owner, as that term is defined in Section 3(2) of the Communications Act.⁹

⁸ *July 1, 2017 Tariff Filing Order* ¶ 9.

⁹ 47 U.S.C. § 153(2).

The *USF/ICC Transformation Order* supports this conclusion. The *USF/ICC Transformation Order* does not indicate that the term “affiliates” – for purposes of Section 51.907(g)(2) or otherwise – is limited to the ILEC affiliates of terminating carriers or in any other way. While the *USF/ICC Transformation Order* does not define “affiliates” in the context of the Section 51.907(g)(2) Tandem-Switched Transport Access Service rate reduction, there are several instances in the *USF/ICC Transformation Order* where “affiliate” is used, and the context gives no indication that the Commission construes that definition to exclude non-ILEC affiliates.¹⁰ Moreover, in at least one other context, the *USF/ICC Transformation Order* expressly relies on the statutory definition of the term.¹¹

Indeed, the definition of “affiliate” in the Communications Act eliminates any possible doubt that the term “affiliates” is not limited in the manner proposed by AT&T. In fact, because “affiliates” is not defined in Section 51.907(g)(2), the terms of the Act and Commission precedent dictate that the statutory definition applies.¹² Section 3(2) of the Communications Act states as follows:

¹⁰ See, e.g., *USF/ICC Transformation Order* n. 240 (“Parties seeking relief against an interconnected VoIP provider for alleged violations of our signaling rules could seek relief against that interconnected VoIP provider’s partnering or affiliated LEC.”).

¹¹ In adopting an annual reporting requirement for eligible telecommunications carriers (“ETCs”), the *USF/ICC Transformation Order* explains that, when reporting their affiliated interests, ETCs should rely on the definition of “affiliate” in Section 3 of the Communications Act. See *USF/ICC Transformation Order* n.981.

¹² See 47 U.S.C. § 153 (stating that, “[f]or the purposes of this chapter [Chapter 5: Wire or Radio Communication], unless the context otherwise requires....” the definitions set forth in the Act apply); *Implementation of Section 210 of the Satellite Home Viewer Extension & Reauthorization Act of 2004 to Amend Section 338 of the Communications Act*, 20 FCC Rcd. 14242, ¶ 9 (2005) (“In determining the proper interpretation, we bear in mind that Section 3 of the Communications Act provides definitions of terms that apply for the purposes of this Act, ‘unless the context otherwise requires.’”).

The term “affiliate” means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term “own” means to own an equity interest (or the equivalent thereof) of more than 10 percent.¹³

The rule includes no carve out for affiliates that are not ILECs. Thus, in applying the Section 51.907(g)(2) rate reduction only to ILEC affiliates of tandem owners, and not to “affiliates” as the term is defined in the statute, the instant tariff transmittals are unlawful.

Furthermore, the dictionary definition of “affiliate” is consistent with an interpretation of the term that is not limited in the manner proposed by AT&T. For example, Merriam-Webster defines affiliate as “an affiliated person or organization; *specifically*: a business entity effectively controlling or controlled by another or associated with others under common ownership or control.”¹⁴ Courts can and do rely on dictionary definitions to interpret language on which the Commission has relied to impose regulatory obligations.¹⁵ Accordingly, the Bureau should find that AT&T’s limited interpretation of “affiliates” defies both the statutory definition and common usage of the term.

Not only is interpreting “affiliates” in a manner consistent with the statute required, it also is in the public interest because it furthers important policy objectives articulated in the *USF/ICC Transformation Order*. In that order, the Commission determined that intercarrier compensation charges should be eliminated and that the industry should transition as soon as

¹³ 47 U.S.C. § 153(2).

¹⁴ Affiliate, *Merriam-Webster*, <https://www.merriam-webster.com/dictionary/affiliate> (emphasis in original).

¹⁵ See, e.g., *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 394 (1999) (citing the Webster’s dictionary definition of “unbundled” to show that it “matches the FCC’s interpretation of the word,” as it appears in 47 U.S.C. § 251(c)(3)); *SBC Commc’ns Inc. v. FCC*, 373 F.3d 140, 149 (D.C. Cir. 2004) (using Merriam Webster’s Collegiate Dictionary to define “subject to” where the implications of its use in an FCC order were at issue).

possible to bill and keep.¹⁶ As the Commission explained, the transition to bill and keep would cause (1) carrier operations to become more efficient, including over time by “eliminat[ing] wasteful arbitrage schemes and other behaviors designed to take advantage of or avoid above-cost interconnection rates”;¹⁷ (2) carrier decisions to invest in communications services to increasingly be based on efficient price signals;¹⁸ and (3) carriers to have increased incentives to innovate to attract and maintain customers.¹⁹

The sooner the industry transitions to bill and keep, the sooner these benefits will be realized. But AT&T’s proposal to exempt tandem-switched traffic to non-ILEC affiliate terminating carriers would delay the transition to bill and keep for a large volume of traffic, i.e., all AT&T ILEC tandem-switched traffic terminated by AT&T’s wireless, CLEC, and VoIP affiliates. Doing so would perpetuate the inefficiencies caused by intercarrier compensation and harm consumer welfare. There is simply no reason to allow this to happen.

C. The Proposed Tariff Revisions Raise Significant Questions of Lawfulness.

Even if the Bureau does not find that the instant transmittals should be rejected, AT&T’s proposed revisions raise significant issues or questions concerning the lawfulness of the tariffs and therefore warrant suspension and investigation.

¹⁶ See, e.g., *USF/ICC Transformation Order* ¶ 741 (“We find that a bill-and-keep framework for intercarrier compensation best advances the Commission’s policy goals and the public interest, driving greater efficiency in the operation of telecommunications networks and promoting the deployment of IP-based networks.”).

¹⁷ *Id.* ¶ 749

¹⁸ See *id.*

¹⁹ See *id.* ¶ 750.

In reviewing the instant tariff transmittals, the Bureau should apply the rule that a tariff filing should be suspended and investigated if there are significant issues or questions concerning the tariff's lawfulness.²⁰ Under the Commission's rules, that standard applies to tariffs that propose a rate restructuring. Since the instant tariff transmittals, along with the June 7 transmittals, propose a rate restructuring under the Commission's rules,²¹ the "significant issues or questions" standard applies.²² But even if the Bureau were to apply the more rigorous standard of review for suspension and investigation set forth in Section 1.773(a)(1)(iv), there is ample basis for concluding that the tariffs should be suspended and investigated.²³

²⁰ See *Bell Atlantic Telephone Cos. Transmittal Nos. 741, 786; Revisions to Tariff F.C.C. 10; Rates, Terms, and Regulations Order*, 10 FCC Rcd. 10831, ¶ 3 (1995). The Bureau suspends and investigates tariff filings when it finds, after initial review, that a more complete record is needed to resolve whether all or certain parts of the tariff filings are lawful. *Id.*

²¹ Section 61.3 of the Commission's rules defines a restructured service as "[a]n offering which represents the modification of a [price cap] service; or the introduction of a new method of charging or provisioning that does not result in a net increase in options available to customers." 47 C.F.R. § 61.3(mm). Here, AT&T is proposing rates that implement a new method of charging for Tandem Switched Transport Access Services. There can therefore be no doubt that AT&T is proposing restructured services.

²² The more rigorous standards for suspension and investigation set forth in Section 1.773(a) apply only to tariffs submitted by (1) non-dominant carriers; (2) small ILECs (those serving 50,000 or fewer access lines in a given study area) pursuant to Section 61.39; (3) price cap carriers filing pursuant to Section 61.49(b); and (4) price cap carriers filing pursuant to Section 61.42(d)(4)(ii). Only the category that applies to price cap carriers filing tariffs pursuant to Section 61.49(b) – that is, tariffs proposing new, "within-cap" and "within band rates" that do not qualify as restructured services – could potentially encompass the AT&T services that are the subject of this petition. However, this category is inapplicable because tariffs proposing restructured services are not filed pursuant to Section 61.49(b).

²³ Under Section 1.773(a)(1)(iv), the Bureau may suspend and investigate a within-cap, within-band tariff filing if it finds that (1) "there is a high probability the tariff would be found unlawful after investigation"; (2) "the suspension would not substantially harm other interested parties"; (3) "irreparable injury will result if the tariff filing is not suspended"; and (4) "the suspension would not otherwise be contrary to the public interest." 47 C.F.R. § 1.773(a)(1)(iv). All four parts of this test are satisfied here.

The Bureau should find that there is a substantial question as to whether AT&T has sought to evade application of the access charge transition rules by applying unlawful Tandem-Switched Transport Access Service rate to affiliates that are not ILECs. As explained, the rates that AT&T has proposed rely on a definition of “affiliates” that is inconsistent with the Commission’s rules, the *USF/ICC Transformation Order*, the Communications Act, the dictionary definition of “affiliate,” and the Commission’s policy objectives. The Bureau should therefore suspend the instant tariff transmittals and investigate AT&T’s proposed exclusion of non-ILEC affiliates’ traffic from the category of traffic to which the July 1, 2017 rate reduction applies, and the inclusion of non-ILEC affiliates’ traffic in the category of traffic to which higher rates apply. If the Bureau does not suspend and investigate the instant transmittals, AT&T’s tariffs will be deemed lawful, and interconnecting carriers such as Level 3 will be unable to recover Tandem-Switched Transport Access Service charges assessed at rates above the maximum lawful rates for such services, needlessly undermining the transition to bill and keep envisioned in the *USF/ICC Transformation Order*.

D. The *USF/ICC Transformation FNPRM* Does Not Support AT&T’s Interpretation of Section 51.907(g)(2).

In its opposition to CenturyLink’s petition to reject or suspend and investigate AT&T’s June 7 transmittals, AT&T argues that the Commission’s *USF/ICC Transformation FNPRM* supports the interpretation of Section 51.907(g)(2) that it has applied in the instant transmittals.²⁴ Specifically, AT&T asserts that, since the Commission sought comment on what rates should apply to ILEC tandem switched calls terminated by non-ILEC affiliates in the *FNPRM*, it makes

²⁴ See AT&T’s Opposition to CenturyLink’s Petition to Reject and to Suspend and Investigate AT&T Tariff Filings (filed June 20, 2017) .

no sense to interpret Section 51.907(g)(2) to encompass that traffic. There is no merit to this argument.

First, it would be beyond strange to define the scope of a rule adopted in an order based on the questions posed in an accompanying further notice of proposed rulemaking. The meaning of a rule must be derived first and foremost from the terms of the rule itself, the order in which the rule is adopted, and relevant statutory provisions. As explained, all of those sources support the conclusion that AT&T's proposed rates are unlawful. Creative (and incorrect) inferences from the non-binding questions posed in the *USF/ICC Transformation FNPRM* cannot somehow undo that conclusion.

Second, and in all events, the questions posed in the *USF/ICC Transformation FNPRM* do not seek comment on the rates that should apply to ILEC tandem switched traffic terminated by non-ILEC affiliates. In the *USF/ICC Transformation FNPRM* the Commission observes that charges for price cap carriers, “where the terminating carrier owns the tandem in the serving area,” are subject to the rules adopted in the *USF/ICC Transformation Order*, but that the rules do not address “the transition for tandem . . . charges if the price cap carrier does not own the tandem in the serving area.”²⁵ The appropriate reading of the phrase “where the carrier owns the tandem” is to include situations where the tandems are owned by any ILEC affiliate, as stated in the rule. This clarification defines the parameters of the discussion of tandem-switched traffic in the *FNPRM*. The recognition that the rates have been set in Section 51.907(g)(2) and the *USF/ICC Transformation Order* for tandem-switched calls terminated by affiliates, without

²⁵ *USF/ICC Transformation FNPRM* ¶ 1306.

qualification or limitation, forecloses any argument that the *FNPRM* should be read to limit “affiliates” in Section 51.907(g)(2) to ILEC affiliates.

Other passages in the *USF/ICC Transformation FNPRM* confirm this conclusion. For example, in the *FNPRM*, the Commission notes commenters’ concern regarding “the end state for tandem switching and transport for price cap carriers when the tandem owner does not own the end office.”²⁶ The Commission also solicits comments on both the transition and appropriate end state of tandem switching services as they relate to separate ownership of a tandem and terminating carrier.²⁷ Nowhere does the Commission seek comment on the rates applicable to tandem-switched traffic terminated by a non-ILEC affiliate. Thus, there is simply no basis for the argument that the *FNPRM* can be read to support AT&T’s interpretation of Section 51.907(g)(2).

²⁶ *Id.* ¶ 1312.

²⁷ *See id.* ¶¶ 1306, 1312.

III. CONCLUSION

For these reasons, the Bureau should reject the instant transmittals. In the alternative, the Bureau should suspend and investigate the instant transmittals, as doing so would give the Bureau time to develop a record sufficient to determine whether the proposed tariff revisions are lawful and to design appropriate remedies.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Samuel Eckland, hereby certify that on this 23rd day of June 2017, I caused to be served a true and correct copy of the foregoing Petition of Level 3 to Reject or Suspend and Investigate on the following parties in the following manner:

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